

HONORABLE PAUL A. CROTTY, United States District Judge:

claims that the trial judge improperly aided the prosecution's case by asking Petitioner questions that revealed judicial skepticism about Petitioner's testimony.

The matter was referred by this Court to United States Magistrate Judge Theodore H. Katz, who issued his Report and Recommendation ("R&R") on December 4, 2007, recommending that Petitioner's request for habeas relief be denied and that the action be dismissed with prejudice. The Magistrate Judge provided ten days for written objections, pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), and specifically advised that the failure to file objections "will result in a waiver of those objections for purposes of appeal." (R&R 29). No objections have been filed.

DISCUSSION

"To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003). Upon review and analysis, the Court finds no clear error in Magistrate Judge Katz's determinations that:

- 1) Petitioner's claim of improper questioning by the trial judge is procedurally barred from federal habeas review because the New York Appellate Division concluded that defense counsel failed to preserve the objection. Thus, the Appellate Division's decision is an adequate and independent state procedural bar to federal habeas review.
- 2) Petitioner's claim of prosecutorial misconduct—that the prosecutor improperly vouched for the credibility of the State's witnesses—is both procedurally barred by an adequate and independent state procedural rule and is wrong on the merits.

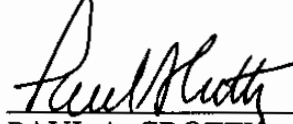
- 3) The prosecutor's comments about Petitioner during summation did not violate the Petitioner's right to a fair trial, and, even if they were improper, were not so severe as to undermine the fairness of the trial.

Accordingly, the Court accepts and adopts the Report and Recommendation as its opinion, and Petitioner's habeas petition is DENIED. Pursuant to 28 U.S.C. § 1915(a)(3), I find that any appeal from this order would not be taken in good faith. Petitioner did not file objections to the Report and Recommendation, as he was required to do in order to preserve his right to appeal.

The Clerk of the Court is directed to enter an Order closing this case.

Dated: New York, New York
August 19, 2008

SO ORDERED



PAUL A. CROTTY
United States District Judge

Copies Mailed To:

Derrick Bostic
04-R-3010
Attica Correctional Facility
P.O. Box 149
Attica, NY 14011-0149

Thomas B. Litsky
Assistant Attorney General
Of the State of New York
120 Broadway
New York, NY 10271